

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:
Cabell County Commission v.
AmerisourceBergen Drug Corp., et al.
Case No. 17-op-45053-DAP

MDL No. 2804

Hon. Dan Aaron Polster

**MOTION REQUESTING JUDICIAL NOTICE
IN FURTHER SUPPORT OF CARDINAL HEALTH'S
MOTION TO DISMISS SECOND AMENDED COMPLAINT**

INTRODUCTION

In accordance with Federal Rule of Evidence 201, Defendant Cardinal Health respectfully requests that the Court take judicial notice of certain adjudicative facts in consideration of its motion to dismiss the Second Amended Complaint filed by the Cabell County Commission (the “County”). In particular, Cardinal Health requests that the Court take judicial notice of the signed Settlement Agreement and Release between Cardinal Health and the State of West Virginia in *West Virginia ex rel. McGraw v. Cardinal Health, Inc.*, No. 12-C-140 (Cir. Ct. Boone Cnty., W. Va.), together with other state and federal court filings in the same and similar matters.

ARGUMENT

The Federal Rules of Evidence provide that the Court may take judicial notice of facts that are “generally known within the trial court’s territorial jurisdiction,” or that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)–(2). When “a party requests” judicial notice of such facts, “and the court is supplied with the necessary information,” the Court must take judicial notice of the requested facts, *id.* 201(c)(2), and it may do so “at any stage of the proceeding,” *id.* 201(d).

This motion requests that the Court take judicial notice of state and federal court filings from predecessor litigation between the State of West Virginia and Cardinal Health. Public records, such as judicial filings, are the proper subject of judicial notice. *See, e.g., United States v. Ferguson*, 681 F.3d 826, 834 (6th Cir. 2012) (“Judicial records are a source of “reasonably indisputable accuracy” when they record some judicial action such as dismissing an action, granting a motion, or finding a fact. Courts can properly notice prior judicial acts for the purpose of acting upon them.” (quoting 21B Charles Alan Wright, et al., *Federal Practice and Procedure* § 5106.4 (2d ed. 2005))). “Moreover, judicial records may sometimes be properly noticed to show the acts of the parties or other actors in the litigation; e.g., that a complaint was filed, that return of service

was made, or that stipulations were entered into.” *Id.* (citation, alteration, and internal quotation marks omitted); *accord United States v. Wahid*, No. 1:14-cr-214, 2018 WL 2717287, at *5 n.68 (N.D. Ohio, June 6, 2018). The following judicial records are attached hereto as exhibits:

1. Complaint, *West Virginia ex rel. McGraw v. Cardinal Health, Inc.*, No. 12-C-140 (Cir. Ct. Boone Cnty., W. Va., June 26, 2012) (attached as Ex. 1);
2. Amended Complaint, *West Virginia ex rel. Morrissey v. Cardinal Health, Inc.*, No. 12-C-140 (Cir. Ct. Boone Cnty., W. Va., Jan. 9, 2014) (attached as Ex. 2);
3. Second Amended Complaint, *West Virginia ex rel. Morrissey v. Cardinal Health, Inc.*, No. 12-C-140 (Cir. Ct. Boone Cnty., W. Va., August 11, 2015) (attached as Ex. 3);
4. Settlement Agreement and Release dated January 9, 2017 (attached as Ex. 4);
5. Order of Dismissal with Prejudice, *West Virginia ex rel. Morrissey v. Cardinal Health, Inc.*, No. 12-C-140 (Cir. Ct. Boone Cnty., W. Va., Jan. 9, 2017) (attached as Ex. 5);
6. Plaintiff’s Reply Memorandum in Support of Motion to Remand and for Costs, *West Virginia ex rel. McGraw v. Cardinal Health, Inc.*, No. 2:12-CV-03836, at 3 (S.D. W. Va. Oct. 1, 2012) (attached as Ex. 6);
7. Order Denying Motion to Dismiss, *West Virginia ex rel. Morrissey v. Cardinal Health, Inc.*, No. 12-C-140 (Cir. Ct. Boone Cnty., W. Va., Apr. 17, 2015) (attached as Ex. 7).
8. H.D. Smith Settlement Agreement and Release dated December 28, 2016 (attached as Ex. 8).

CONCLUSION

For the reasons stated, Cardinal Health respectfully requests that the Court take judicial notice of the foregoing judicial records.

Dated: June 8, 2018

Respectfully submitted,

/s/ Enu Mainigi

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CERTIFICATE OF SERVICE

I, Ashley W. Hardin, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Ashley W. Hardin

Ashley W. Hardin